



# Commodity Futures Trading Commission

## Office of Public Affairs

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## Q & A – Final Rulemaking: Part 43 (Real-Time Public Reporting)

### What is the goal of the final rulemaking?

This final rulemaking implements Section 727 of the Dodd-Frank Act to provide a real-time public reporting regime to promote transparency and enhance price discovery in the swaps markets. The part 43 rules are designed to make swap transaction and pricing data available to the public in real-time by regulating reporting and public dissemination while protecting the anonymity of market participants. The final rules also provide for time delays for publicly disseminating certain swap transaction and pricing data.

### What swaps are required to be reported and publicly disseminated pursuant to part 43?

Pursuant to part 43, all “publicly reportable swap transactions” must be reported and publicly disseminated. Part 43 defines a “publicly reportable swap transaction” as (1) any swap that is an arm’s-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or (2) any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of a swap.

The final rules cover publicly reportable swap transactions under the Commission’s jurisdiction in all five asset classes (i.e., interest rate, credit, equity, foreign exchange, and other commodity), whether cleared or uncleared, and regardless of the method of execution (e.g., executed bilaterally, or on a registered swap execution facility or designated contract market). This final rulemaking does not presently subject certain swaps in the “other commodity” asset class to the requirements of part 43.

### Which parties must report real-time swap transaction and pricing data for public dissemination?

Parties to a swap are responsible for reporting swap transaction information to the appropriate registered swap data repository in a timely manner, as set forth in part 43 and described below.

For those publicly reportable swap transactions executed on or pursuant to the rules of a registered swap execution facility or designated contract market, the parties satisfy their reporting obligation by executing the transaction on or pursuant to the rules of the execution facility. A registered swap execution facility or designated contract market must report the swap transaction and pricing data to the appropriate registered swap data repository for public dissemination.

For those publicly reportable swap transactions that are not executed on or pursuant to the rules of a registered swap execution facility or designated contract market, unless otherwise agreed to by the parties prior to execution, the parties to the transaction would report to the appropriate registered swap data repository for public dissemination as follows:

- If only one party is a swap dealer or major swap participant, then the swap dealer or major swap participant should report to the registered swap data repository;
- If one party is a swap dealer and the other party is a major swap participant, then the swap dealer should report to the registered swap data repository; and
- In all other situations, the parties shall designate which party should report to the registered swap data repository.

### **Who will publicly disseminate swap transaction and pricing data under part 43?**

Registered swap data repositories must ensure that swap transaction and pricing data are publicly disseminated pursuant to part 43. A registered swap data repository may contract with a third party to assist with the requirements of part 43; however, the obligation remains on the registered swap data repository to ensure that there is appropriate public dissemination.

### **When does “execution” occur for the purposes of the final part 43 rules?**

Execution occurs simultaneously with or immediately following the affirmation of the swap. Execution is defined as an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law. Affirmation is the process by which parties to a swap verify (orally, in writing, electronically or otherwise) that they agree on the primary economic terms of a swap (but not necessarily all terms of the swap). Affirmation may constitute “execution” of the swap or may provide evidence of execution of the swap, but does not constitute confirmation (or confirmation by affirmation) of the swap.

### **When must real-time swap transaction and pricing data be reported for public dissemination?**

Swap transaction and pricing data must be reported to a registered swap data repository “as soon as technologically practicable” after execution of a publicly reportable swap transaction. “As soon as technologically practicable” means as soon as possible, taking into consideration the prevalence, implementation and use of technology by comparable market participants. The timing for what is “as soon as technologically practicable” may differ based on the type of market participant who is responsible for reporting and the type of execution.

### **When must real-time swap transaction and pricing data be publicly disseminated?**

Swap transaction and pricing data must be publicly disseminated by a registered swap data repository “as soon as technologically practicable” after the registered swap data repository receives such data, unless the publicly reportable swap transaction is subject to a time delay under part 43.

### **What publicly reportable swap transactions are subject to the time delays for public dissemination described in the final rules?**

All block trades and large notional off-facility swaps will be subject to the time delays for public dissemination described in the final rules. Additionally, all publicly reportable swap transactions that do not have “appropriate minimum block sizes” are subject to the time delays, as described in the final rules. The Commission is not addressing “appropriate minimum block sizes” in this final rulemaking.

### **How are the time delays for public dissemination of swap transaction and pricing data determined under the final rules?**

The final rules provide the exact time delays for the public dissemination of swap transaction and pricing data based on the (i) type of execution; (ii) underlying asset; and (iii) market participant. A distinction is also made for certain swaps subject to the mandatory clearing requirement. The time delays are described in final § 43.5 and Appendix C to part 43.

### **In what significant ways do the final part 43 rules differ from the proposed rules?**

Although the Commission has determined to adopt the part 43 rules substantially as proposed, it has—after reviewing the comments received and consulting with other financial regulators—made the following revisions to the proposed rules.

- Role of registered swap data repository in public dissemination – Under the proposed rules, a publicly reportable swap transaction executed on or pursuant to the rules of a registered swap execution facility or designated contract market could be publicly disseminated by sending the publicly reportable transaction and pricing data to either a registered swap data repository or to a third party disseminator. Under the final rules, all real-time swap transaction and pricing data must be reported to the appropriate registered swap data repository for public dissemination. A registered swap data repository must ensure public dissemination of all swap transaction and pricing data related to publicly reportable swap transactions.
- Definition of “publicly reportable swap transaction” – Under the proposed rules, all swaps were considered to be subject to reporting and public dissemination for the purposes of part 43. The final rules, clarify that a “publicly reportable swap transactions” (those transactions subject to the part 43 real-time public reporting rules) must be either (1) an executed swap that is an arm’s length transaction between two parties that results in a corresponding change in the market risk position between the two parties or (2) a termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap.
- Time delays for public dissemination – The proposed rules provided a 15-minute time delay for block trades and large notional swaps that were executed pursuant to the rules of a registered swap execution facility (SEF) or designated contract market (DCM) and requested comment regarding time delays for other methods of execution. The final rules provide that time delays for public dissemination differ based on type of execution, underlying asset and market participant, among other things.
- Data fields to be publicly disseminated – Certain data fields described in Appendix A to part 43 have been revised, deleted or added for clarification and to enhance price discovery.
- Recordkeeping requirements – With the exception of the recordkeeping requirements relating to timestamps, the final rules remove all other recordkeeping requirements that were proposed.

### **Issues to be addressed later.**

The final rules do not cover the following issues that were described in the proposed rule. The Commission will address these issues in a future Commission rulemaking:

- Appropriate minimum block size – The final rules do not contain rules relating to categorizing swaps and determining the appropriate minimum size relating to block trades and large notional off-facility swaps.
- Public dissemination of certain swaps in the “other commodity” asset class – The final rules do not address the public dissemination of certain publicly reportable swap transactions in the “other commodity” asset class. As a result, such publicly reportable swap transactions will not be subject to the part 43 rules at this time.